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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,394	07/17/2003	Nadi S. Findikli	U02-0216.40	1393

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EXAMINER
D AGOSTA, STEPHEN M

ART UNIT	PAPER NUMBER
2617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/604,394

Applicant(s)

FINDIKLI, NADI S.

Examiner

Stephen M. D'Agosta

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Pre-Appeal, filed 2-2-07, with respect to the rejection(s) of claim(s) 1-58 under USC 1-2 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

- The examiner notes that the rejection below discloses teachings whereby a mobile device's software is version-controlled and automatically updated if/when it is sensed that said software is out of date.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-23, 25-33, 35-46, 48- 49 and 50-58 rejected under 35 U.S.C. 103(a) as being unpatentable over Blow WO99-53621 and further in view of Imamatsu US 2004/0073901.

As per **claims 1, 17, 29, 37 and 42**, Blow teaches a method of operating a mobile phone accessory communicable with a mobile phone (title, abstract), the method comprising:

(a) establishing a communication link between the mobile phone and the mobile phone accessory (figure 1 shows mobile device #100 connecting to mobile accessory #102 via communications interface #112);

Art Unit: 2617

(b) exchanging data between the mobile phone and the mobile phone accessory between the mobile and accessory device, (Summary, page 2, teaches connecting the two devices and the mobile downloading control software/data from the accessory. Also see page 6, L4-10 and further thru Line39); and

(c) transferring the software from the mobile phone accessory to the mobile phone via the communication link (Summary, page 2, teaches transferring data from the accessory to the phone);

but is silent on the data pertaining to software resident on the first apparatus (mobile phone accessory) and the ability of the second apparatus (mobile phone) to download and execute the software, wherein the data is used to determine what software to transfer from the first apparatus (mobile phone accessory) to the second apparatus (mobile phone).

The examiner notes that version control systems can provide automatic "scanning" of apparatuses such that out-of-date software is updated.

Imamatsu who discloses:

"..The above-described object of the present invention are achieved by a method for updating software in a radio terminal device of a mobile communication system, wherein a base station and radio terminal devices are connected mutually through radio communication channels, including the steps of:

notifying version information on a control-software presently involved in operations of the radio terminal device to a software-supply device connected to a network by the radio terminal device;

determining a necessity of updating the control-software by comparing the version information received from the radio terminal device with latest version information stored in and managed by the software-supply device; and

downloading new control-software that is appropriate to update the version of the control-software to the radio terminal device by the software-supply device if updating of the control-software is needed. C2, L15-35

The examiner has also included art (eg. pertinent but not cited) which puts forth many different updates and update procedures that can be envisioned based on what the mobile device had previously loaded.

With further regard to claim 17, Blow teaches an accessory controller (which read on "an accessory interaction handler within the mobile phone", Figure 1, #108)

As per **claims 2, 18-19, 30, 38 and 43**, Blow teaches claim 1/17/29/37/42 wherein exchanging data between the mobile phone and the mobile phone accessory further comprises: ensuring that the mobile phone is capable of receiving software through the communication link; and ensuring that the mobile phone accessory is capable of transferring software through the communication link (Summary, page 2, teaches authenticating the mobile device prior to transfer, Pages 2-3 teach supporting/detecting various different protocols. Page 6, L38-39 teaches a predefined, eg. agreed-to, protocol).

As per **claims 3, 20-21, 31, 39 and 44**, Blow teaches claim 1/17/29/37/42 further comprising: verifying that the mobile phone accessory is authorized to transfer the software to the mobile phone; and verifying that the mobile phone is authorized to receive the software from the mobile phone accessory (Summary, page 2, teaches authenticating prior to software download).

As per **claims 8-10 and 50-52**, Blow teaches claim 1 wherein the communication link is a wireless RF link/cabled link/optical link (page 3, L35 to page 4, L2 teaches wired/wireless means).

As per **claims 4, 22, 32 and 45**, Blow teaches claim 1/17/29/42 **but is silent on** further comprising verifying that the transferred software is licensed for use by the mobile phone.

Blow teaches authenticating prior to software download, which reads on use of licenses. The examiner takes **Official Notice** that the use of licenses are well known in the art of software distribution and require a person to buy said license prior to downloading/operating software.

It would have been obvious to one skilled in the art at the time of the invention to modify Blow, such that it verifies that the transferred software is licensed for use by the mobile phone, to ensure piracy does not occur.

As per **claims 5, 23, 33 and 46**, Blow teaches claim 1/17/29/42 **but is silent on** further comprising verifying that the transferred software is certified to be used on the mobile phone.

Blow teaches authenticating prior to software download, which reads on use of certifying the user/user device. The examiner takes **Official Notice** that the process of authenticating a user also reads on certifying that their processing device is certified to operate the software.

It would have been obvious to one skilled in the art at the time of the invention to modify Blow, such that it verifies that the transferred software is certified on the mobile phone, to ensure piracy does not occur.

As per **claims 7 and 48**, Blow teaches claim 1/42 **but is silent on** wherein the software is encrypted before the transferring step.

Blow teaches using authentication means to verify the user (Summary) which implies "security measures" being used. Hence one skilled would encrypt the link if sensitive data is being transmitted. The examiner takes **Official Notice** that transmitting data in encrypted fashion is well known.

It would have been obvious to one skilled in the art at the time of the invention to modify Blow, such that the software is encrypted before the transferring step, to provide means for protecting against piracy/stealing of the software.

As per **claim 11-13, 15-16 and 53-55 and 57-58**, Blow teaches claim 1/42 **but is silent on** wherein the software is a java script/HTML script/XML script (Summary, page 2, teaches downloading of generic software, which the examiner interprets as being virtually any type of language, ie. C, C++, Fortran, Java, HTML, XML, BREW - Binary Runtime Environment for Wireless, etc.).

The examiner takes **Official Notice** that mobile phones can download software code/script from remote sites.

It would have been obvious to one skilled in the art at the time of the invention to modify Blow, such that the software is a java script/HTML script/XML script/C/C++, to provide support for industry standard software coding languages.

As per **claims 14 and 56**, Blow teaches claim 1/42 wherein the software is a native application specific to the mobile phone (Summary and pages 2-3 teach downloading software to the phone so that it can operate a specific accessory, which would be specific to that particular phone).

As per **claims 25, 27, 35 and 40**, Blow teaches claim 1/17/29 wherein the mobile phone comprises memory for storing the software/programs (figure 1, #104 and #106).

As per **claims 26 and 36**, Blow teaches claim 17/29 wherein the mobile phone further comprises at least one application program interface (API) coupled with a processor for executing the transferred software (page 5, L8-9 and page 6, L26-30 and page 7, L6-15 teach a processor/controller executing the downloaded software).

As per **claims 28, 41 and 49**, Blow teaches claim 17/37/42 wherein the mobile phone accessory chooses a software program to transfer to the mobile phone based on the characteristics and capabilities of the mobile phone (figure 2 show a flow chart whereby at step 204, VALID ACCESSORY?, the system determines if the phone can receive the software, which the examiner interprets as requiring a check of either the characteristics or capabilities of the phone, since it would not be optimal to download programs which the phone cannot support).

Claims 6, 24, 34 and 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Blow/Imamatsu and further in view of Nenashev US 6,976,167.

As per **claims 6, 24, 34 and 47**, Blow teaches claim 1/17/29/42 **but is silent** further comprising verifying that the transferred software has not been tampered with since its creation.

Nenashev teaches determining if software has been tampered with based on a "fingerprint":

The tamper-resistant high-security software protection mechanism 100 traces software tampering through a dynamically

Art Unit: 2617

computed fingerprint (120a or 120b). A fingerprint is a unique identifier of the protected portion 115 and is computed on-the-fly based on some invariant characteristics of the protected portion 115. Invariant characteristics used to generate a fingerprint may be determined in such a way that they are invariant with respect to different executions, if there is no tampering act, yet sensitive to any change introduced by tampering acts. For example, the content of a random access memory (RAM) block allocated to an object does not change between executions unless the source code is changed. In this case, the region between the starting and the ending address of such a block may be used as an invariant characteristic in computing a fingerprint. As will be apparent to those skilled in the art, any number of invariant characteristics can be used to compute a fingerprint and any number of algorithms can be used to generate the fingerprint based on invariant characteristics. (C2, L47-57)

It would have been obvious to one skilled in the art at the time of the invention to modify Blow, such that it verifies that the transferred software has not been tampered with since its creation, to provide protection against viruses/worms/etc. being inserted into the code.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Henry et al. US 2001/0046854
2. Majmundar et al. US 6,970,698
3. Herle US 7,165,173
4. Cowan US 5,848,064
5. Chen et al. US 6,496,979
6. McGuire et al. US 6,493,871

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. D'Agosta whose telephone number is 571-272-7862. The examiner can normally be reached on M-F, 8am to 5pm.

Art Unit: 2617

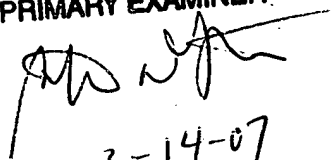
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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3-14-07